

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 14-004W
READOPTION OF 312 IAC 6.3:)	
WATER WITHDRAWAL CONTRACTS)	
FROM STATE RESERVOIRS)	(LSA Document #14-97(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 6.3 in its entirety, and without amendment. This article provides standards to review of contracts for the withdrawal or release of water supply storage from a reservoir. Upon receiving a contract request, 312 IAC 6.3-3-3 requires the Director of the Department's Division of Water to appoint a DNR employee as hearing officer to hold a public meeting (or meetings) regarding the contract request. The hearing officer is to maintain a record of the public meeting to assist in providing written recommendations to the Advisory Council. As required by 312 IAC 6.3-3-4, the Advisory Council submits a report to the Natural Resources Commission ("Commission") summarizing the public meeting or meetings. The report may be accompanied by recommendations that duplicate, augment, or contrast with those of the hearing officer. The Commission would consider the contract request as to whether the request met certain standards (312 IAC 6.3-3-5). Upon Commission approval, the contract is forwarded to the Attorney General for approval and subsequently to the Governor approval. The remainder of Article 6.3 addresses contract terms and conditions (Rule 4); the Department Director's ability to declare a drought alert for a designated reservoir based upon a drought emergency plan approved by the Commission (Rule 5); and enforcement, as suspension or revocation, of any contract for the withdrawal or release of water. 312 IAC 6.3 can be accessed through the Indiana General Assembly's website at: <http://www.in.gov/legislative/iac/T03120/A00063.PDF>.

If rules are readopted in their current form without amendments under 312 IAC 2-2-4(b), the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on March 19, 2014. The standard practice is to readopt rules by article, and 312 IAC 6.3 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

James Hebenstreit, Assistant Director of the Division of Water, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 5:

Review under IC 4-22-2.5-3.1

The continued need for the rule.

The Department of Natural Resources (DNR) currently administers nine contracts for the sale of water from state-financed reservoirs. Rule 312 IAC 6.3 is required for the review, development and implementation of contracts for the sale of water under IC 14-25-2.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The DNR received no complaints or comments from the public or small businesses concerning the implementation of Rule 312 IAC 6.3.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

No difficulties have been encountered by DNR for the administration of Rule 312 IAC 6.3. In addition, no difficulties were reported by small business for compliance with the rule.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

Rule 312 IAC 6.3 does not overlap, duplicate or conflict with other federal, state or local laws, rules, regulations or ordinances.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

Rule 312 IAC 6.3 was amended in 2009, and no significant changes in technology, economic conditions or other factors in the area affected by this rule have occurred since that time.

Review under IC 4-22-2.1-5

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

Factors analyzed by DNR for Rule 312 IAC 6.3 have not changed since the previous economic impact statement was prepared.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

No regulatory flexibility analysis of alternate methods was conducted by DNR to statutory requirements set forth in IC 14-25-2.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

No regulatory alternatives were considered by DNR due to the statutory requirements set forth in IC 14-25-2.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Financial Management Circular 2013-01 restated these requirements and added compliance information. On May 2, 2013, the Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget, the Legislative Council, and the Administrative Rule Oversight Committee on April 24, 2014. In a May 27, 2014 letter the Director of the State Budget Agency recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 26, 2014, the “Notice of Intent to Readopt” 312 IAC 6.3 was posted to the *Indiana Register* at 20140326-IR-312140097RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 6.3 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 6.3, without amendment, for subsequent filing with the Publisher.

Dated: June 16, 2014

Jennifer M. Kane
Hearing Officer